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7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 MARIANNE JACKSON, individually,)
10 Plaintiff,) Case No. 2:14-cv-00392-APG-GWF
11 v.)
12 UNITED STATES OF AMERICA,)
13 Defendants.)

14 **MOTION REQUESTING EXCEPTION TO SETTLEMENT**
CONFERENCE ATTENDANCE REQUIREMENT

15 **I. INTRODUCTION**

16 A settlement conference regarding this adversary proceeding is scheduled for July 14, 2016, at
17 10:00 a.m. before U.S. Magistrate Judge Cam Ferenbach. Plaintiff's administrative claim in this matter
18 was \$5,000,000. Plaintiff has not made a subsequent demand.

19 The Order setting the Settlement Conference provides:

20 In the case of non-individual parties, counsel of record shall arrange for an officer or
21 representative with binding authority to settle this matter up to the full amount of the claim
22 or most recent demand to be present for the duration of the conference. ... A request for an
exception to the above attendance requirements must be filed and served at least two weeks
prior to the settlement conference.

23 The United States requests that the Court authorize Assistant United States Attorney Troy Flake
24 to participate in the settlement conference in person as the sole settlement representative for the
25 Government.

1 **II. ARGUMENT**2 The United States Supreme Court has noted that the federal Government is unlike any other
3 litigant:4 We have long recognized that the Government is not in a position identical to that of a
5 private litigant, both because of the geographic breadth of government litigation and also,
6 most importantly, because of the nature of the issues the government litigates. It is not
7 open to serious dispute that the government is a party to a far greater number of cases on
8 a nationwide basis than even the most litigious private entity.9 *United States v. Mendoza*, 464 U.S. 154, 159 (1984) (internal citation omitted).10 Because the Government handles a very large number of cases, it would be impractical, if not
11 physically impossible, for those with settlement authority for the full claim amount to prepare for and
12 appear at all settlement conferences. *United States v. U.S. Dist. Court*, 694 F.3d 1051, 1059 (9th Cir.
13 2012) (district court abused its discretion in ordering a Government representative with full settlement
14 authority to appear in person for an initial settlement conference). The Advisory Committee notes that
15 accompany the 1993 amendments to Federal Rule of Civil Procedure 16 acknowledge the unique position
16 of the Government in that regard: “Particularly in litigation in which governmental agencies … are
17 involved, there may be no one with on-the-spot settlement authority, and the most that should be
expected is access to a person who would have a major role in submitting a recommendation to the body
or board with ultimate decision-making responsibility.” *Id.* at 1060.18 The Government delegates settlement authority to select individuals in order to promote
19 centralized decision-making. *Id.* at 1059. Centralized decision-making promotes three important
20 Government objectives. *Id.* at 1060. First, it allows the Government to act consistently in important cases.
21 *Id.* Second, it allows the executive branch to pursue policy goals more effectively by placing ultimate
22 authority in the hands of a few officials. *Id.* Third, by giving authority to high-ranking officials,
23 centralized decision-making better promotes political accountability. *Id.*24 In light of those principles, the Ninth Circuit has determined that the courts should adopt a
25 “practical approach” in deciding whether to require a Government representative with full settlement
26 authority to attend a pretrial conference. *Id.* at 1061. In the Ninth Circuit’s view, the courts should

1 consider less drastic steps, such as telephonic participation, before requiring in-person participation. *Id.*
2 Only as a “last resort” should the District Court require an official with full settlement authority to
3 participate in a pretrial conference in person. *Id.*

4 The ultimate authority to settle this case rests with the United States Attorney, the Civil Division
5 Chief, or higher ranking officials within the Department of Justice (“DOJ”), depending on whether the
6 client agency and DOJ officials agree with the proposed resolution. 28 C.F.R. § 0.168(a). It is simply not
7 feasible, however, for these officials to attend each and every settlement conference. Moreover, Assistant
8 United States Attorneys routinely participate in settlement conferences in this district as sole settlement
9 representatives for the Government. In fact, the Government has utilized this approach with much success
10 for many years and, as a result, hundreds of cases involving the United States have settled.

11 Accordingly, the United States respectfully requests that the Court authorize Assistant United
12 States Attorney Flake to participate in the settlement conference in person as the sole settlement
13 representative for the Government. He will ensure that the case is thoroughly evaluated by the
14 appropriate Government officials in advance of the settlement conference so as to provide meaningful
15 participation.

16 **III. CONCLUSION**

17 For the reasons above, the United States respectfully requests that the Court permit Assistant
18 United States Attorney Flake to participate in the settlement conference scheduled for July 14, 2016, as
19 the sole settlement representative for the Government.

20 Respectfully submitted this 24th day of June 2016.

21 DANIEL G. BOGDEN
22 United States Attorney

23 /s/ Troy K. Flake
TROY K. FLAKE
Assistant United States Attorney

24 **IT IS SO ORDERED.**



25 **UNITED STATES MAGISTRATE JUDGE**
26 **DATED:** 7-8-2016

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PROOF OF SERVICE

2 I, Troy K. Flake, certify that the following individuals were served with the **MOTION**
3 **REQUESTING EXCEPTION TO SETTLEMENT CONFERENCE ATTENDANCE**
4 **REQUIREMENT**

5 on this day by the below identified method of service:

6 **Electronic Case Filing:**

7 Ross Moynihan
8 Stovall & Associates
9 2301 Palomino Lane
10 Las Vegas, Nevada 89107
11 ross@lesstovall.com

12 Dated this 24th day of June 2016.

13

/s/ Troy K. Flake
14 TROY K. FLAKE
15 Assistant United States Attorney
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